

**Special Education Waiver Process**  
**For SY 2017-2018**  
**Based on Kentucky Administrative Regulations**  
Effective August 5, 2017

The Kentucky Department of Education (KDE), Division of Learning Services (DLS) promulgated Kentucky Administrative Regulations (KARs) for special education programs that became effective August 1, 2001. Below is a brief summary of the KARs in regard to program teacher assignment, shortened school day notices, case load waivers, class size waiver and grade range waivers. Also included are tables establishing requirements for both the caseload and class size based on special education teacher as submitted to the Education and Professional Standards Board (EPSB). The tables include information on waivers this office will approve. Grade Range waivers are approved on a case-by-case basis. *Waivers need to be submitted in a timely manner. Consistent course code use will now allow spot checks of data for timely submissions. Waivers not submitted in a timely manner may initiate a district monitoring event.*

**Program Teacher Assignment:** 16 KAR 4:020, Qualifications for Assignments. This regulation ensures a properly certified educator is providing individual instruction to exceptional children. Waivers must be requested when there are special education assignments for a teacher who is not certified in the area of their assignment. The Local Educator Assignment Data (LEAD) report reviews all courses and compares staff and course information to the teacher certification database. *If teacher assignments are not in compliance, Support Education Excellence in Kentucky (SEEK) funds could be lost or legal action could be administered against administrator and/or teacher certificates. While these waiver requests will be submitted to the KDE/DLS, approval of the assignment will come from EPSB.*

**Shortened School Day:** Students with disabilities are expected to attend school for the entire school day. However, when circumstances warrant, the Admissions and Release Committee (ARC) may determine it is in the student's best interest to shorten the school day or week. Districts must meet the same requirements for granting a shortened school day as in previous years, including:

- a medical statement signed by a physician,
- documented determination by the student's ARC that a shortened school day is needed,
- an IEP that prescribes the length of the shortened day and
- approval by the district's Board of Education that maintains the student's confidentiality.

When the school day is shortened and all these pieces are in place, the district must submit notice to the KDE/DLS on forms provided. Information shall include:

- the student's name,
- disability,
- school,
- school district,
- teacher,
- length of day,
- building principal,
- confirmation that there is a signed medical statement, an ARC determination of need,
- the shortened day described in the student's IEP and

the approval of the shortened school day for the specified student by the local Board of Education.

*Note: This is **not a request** for approval from KDE/DLS, but rather it is **notice** to this office that the district has shortened the school day of a child with a disability pursuant to criteria described.*

**Grade Range (per period and overall):** KARs do not specify *age ranges* per period or for overall caseload. As a result, age range issues are viewed as **Grade Range** issues and are based on teacher certification, location of the class and the level of the non-disabled students on the campus. Students assigned to a teacher roster for either management of their folders or for instruction must be appropriate for the teacher's certification and assignment.

Students must also meet the same grade and age level requirements as general education students at the school where the teacher teaches and the student is enrolled. This means special education students must be located on the same campus as their same age/grade peers. When special education students are not housed on an age or grade appropriate campus, then the district must submit a request for a **Grade Range Waiver**. In cases where a middle school special education unit is housed at an elementary school campus, then there must be a grade range waiver request to address the teacher's assignment.

For example, a teacher assigned to an elementary school should only have elementary school age students in grade appropriate classes, middle school teachers should only have middle school age students and high school teachers should only have high school age students. Teachers on mixed campuses such as K-8 or 7-12, should be assigned students appropriate for these grades meeting the same grade and age level requirements as the general education teachers at these schools.

*Remember, the needs of the student being placed, and the students within the classroom, need to be taken into consideration when requesting a grade range waiver. Inappropriate relationships or bullying should not be occurring in the classroom. If a component of the dispute resolution process were to be utilized, a more in-depth investigation may take place and a finding could be determined that conflicts with the approval of the grade range waiver. The investigation finding would stand.*

**Case Load (overall numbers):**

***Special Class*** – Case load assignments for special class are the same as the class size per period described below for the special class. Case load of a special class is based on the disability category of the majority of students served by a teacher. If the case load exceeds the maximum number of students for 30 days, then the district must submit a request for a **Case Load Waiver**.

***Resource Class*** - Case load is the number of student records for whom a teacher can be assigned. This does not mean that this teacher will not provide specially designed instruction to other special education students. However, the resource teacher is only responsible for maintaining the student folder and due process documentation on these students. The total number of students the resource class teacher provides services to is limited by the per period class size. If the caseload exceeds the maximum number of students for 30 days, then the district must submit a request for a **Case Load Waiver**.

***Collaboration*** – If a teacher provides services through the collaborative model, the maximum caseload shall not exceed twenty (20) children with disabilities for secondary and fifteen (15) children with disabilities for primary.

**Class size (per period):**

***Special Class*** – Class sizes for the special class are **the same** as the case load of a special class and are based on the disability category of the majority of students served by a teacher. Class size for an SLD class is also impacted based on whether it is a Primary (K-8) or Secondary (7-12) campus. While regulations do not allow for a waiver to the class size per period, Case Load Waivers granted to a special class will increase the class size per period as well.

***Resource Class*** – Class sizes for the resource class are **different** than the case load but like the special class are also based on the disability category of the majority of students served by a teacher.

***Collaboration*** – Class size for collaboration classes means the number of children with disabilities assigned to a teacher of exceptional children per period, block, or the specified length of the time set by the individual school district.

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## Case Load Requirements

<b>Teacher Assignment, Code and Class Plan</b>	<b>Maximum Case Load</b>	<b>Waiver without Teacher Assistant</b>	<b>Waiver With Full Time Teacher Assistant</b>
<b><u>Visual Disability</u></b>			
6010 Special Class	10	11	12
6012 Resource Plan	10	11	12
6012 (Itinerant)	10	11	12
<b><u>Hearing Impaired</u></b>			
6020 Special Class	6	7	8
6022 Resource Plan	8	9	10
6022 (Itinerant)	8	9	10
<b><u>Mental Disability</u></b>			
<b><u>Mild Level:</u></b>			
6030 Special Class			
Primary – 8	15	16	17
Secondary 7-12	15	16	17
6032 Resource Plan			
Primary – 8	15	16	17
Secondary 7-12	20	21	22
<b><u>Mental Disability</u></b>			
<b><u>Functional Level</u></b>			
6120 Special Class	10	11	12
6122 Resource Plan	10	11	12
<b><u>Emotional-Behavioral Disability</u></b>			
6040 Special Class	8	9	10
6042 Resource Plan	15	16	17
<b><u>Learning Disability</u></b>			
6060 Special Class			
Primary – 8	10	11	12
Secondary 7-12	15	16	17
6062 Resource Plan			
Primary – 8	15	16	17
Secondary 7-12	20	21	22
<b><u>Collaboration Model</u></b>			
6263 Collaboration Model			
Primary – 8	15	No Waivers	No Waivers
Secondary 7-12	20	No Waivers	No Waivers
<b><u>Physical Disability and Other Health Impaired</u></b>			
6070 Special Class	16	17	18
6072 Resource Plan	20	21	22
<b><u>Speech/Language</u></b>			
6102 Resource Plan	65	No Waivers	No Waivers
6103 One SLPA	97	No Waivers	No Waivers
6104 Two SLPA	130	No Waivers	No Waivers
<b><u>Multiple Disability</u></b>			
<b><u>(FMD)</u></b>			
6133 Special Class	10	11	12
6134 Resource Plan	10	11	12
<b><u>(MMD)</u></b>			
6135 Special Class	10	11	12
6136 Resource Plan	10	11	12

For **Middle School Programs**, Teachers with **ONLY** 7th and 8th Grade Students on the Roster Use the **Secondary Case Load**. However, Whenever There is a 6th (or Lower) Grade Student on the Roster, the **Primary Case Load** is Used.

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## Class Size per Period Requirements

<b>Teacher Assignment, Code and Class Plan</b>	<b>Maximum Class Size</b>	<b>Waiver without Teacher Assistant</b>	<b>Waiver with a Teacher Assistant During Excess Class Size</b>
<b><u>Visual Disability</u></b> 6010 Special Class 6012 Resource Plan 6012 (Itinerant)	N/A 8 8	N/A 9 9	N/A 10 10
<b><u>Hearing Impaired</u></b> 6020 Special Class 6022 Resource Plan 6022 (Itinerant)	N/A 8 8	N/A 9 9	N/A 10 10
<b><u>Mental Disability</u></b> <b><u>Mild Level:</u></b> 6030 Special Class Primary – 8 Secondary 7-12 6032 Resource Plan Primary – 8 Secondary 7-12	N/A N/A N/A 10 10	N/A N/A N/A 11 11	N/A N/A N/A 12 12
<b><u>Mental Disability</u></b> <b><u>Functional Level</u></b> 6120 Special Class 6122 Resource Plan	N/A 8	N/A 9	N/A 10
<b><u>Emotional-Behavioral Disability</u></b> 6040 Special Class 6042 Resource Plan	N/A 8	N/A 9	N/A 10
<b><u>Learning Disability</u></b> 6060 Special Class Primary – 8 Secondary 7-12 6062 Resource Plan Primary – 8 Secondary 7-12	N/A N/A N/A 10 10	N/A N/A N/A 11 11	N/A N/A N/A 12 12
<b><u>Collaboration Model</u></b> 6263 Collaboration Model Primary – 8 Secondary 7-12	N/A N/A	N/A N/A	N/A N/A
<b><u>Physical Disability and Other Health Impaired</u></b> 6070 Special Class 6072 Resource Plan	N/A 10	N/A 11	N/A 12
<b><u>Speech/Language</u></b> 6102 Resource Plan 6103 One SLPA 6104 Two SLPA			
<b><u>Multiple Disability</u></b> <b>(FMD)</b> 6133 Special Class 6134 Resource Plan <b>(MMD)</b> 6135 Special Class 6136 Resource Plan	N/A 8 N/A 8	N/A 9 N/A 9	N/A 10 N/A 10

For **Middle School Programs**, Teachers with **ONLY** 7<sup>th</sup> and 8<sup>th</sup> Grade Students in the Class Use the **Secondary Class Size**. However, Whenever There is a 6<sup>th</sup> (or Lower) Grade Student in the Class, the **Primary Class Size** is Used.

## Waivers Q & A

**Q: When should we expect acknowledgement that a waiver has been received or accepted?**

The Director of Special Education (DoSE) receives a response from the DoSE secure file transfer system to let them know the Kentucky Department of Education (KDE) received a waiver or notice.

For program teacher assignment waivers, EPSB is the ultimate authority of approval. If a teacher is not clearing the LEAD report and a waiver request was sent, contact Robin Linton regarding the request. The teacher's clearance of the LEAD report is an indication EPSB approved the waiver.

**Q: When does the waiver receipt/acceptance go to in the district? If the waiver goes to someone other than the DoSE, would it be possible for the DoSE to be copied?**

Class size waivers, caseload waivers, and shortened school day notices are approved within the KDE, Division of Learning Services (DLS). They are secondary to program teacher assignment waivers, so they are approved after all program teacher waivers have been approved. There is a significant timeframe between their submissions and their approvals. Usually first semester class size waivers, caseload waivers and shortened school day waivers are processed after November 15. This may mean notifications will not be received until January 1.

Class size, caseload and shortened school day waiver notice approvals are sent to the superintendent, DoSE and principal.

If an issue or problem occurs with a waiver, the DoSE will be called or emailed directly to be informed of the issue or problem. Issues with waivers and shortened school day notices usually vary and are handled on an individual basis. The DLS attempts to do this through email and telephone calls to individual DoSEs regarding individual situations.

**Q: Why have districts not received information regarding their waiver requests? How should the DoSE verify KDE has received the waiver documents?**

As stated previously, approvals of class size waivers, caseload waivers and shortened school day notices are sent to superintendents, DOSEs and principals. In the first semester, caseload, class size waivers and shortened school day notices are processed after November 15, so you may not receive any documentation of their approval until January 1. Robin works with administrative staff to notify district personnel through email regarding the approvals of waivers and the notifications of shortened school days. Workload of administrative staff may impact when notification or documentation of the approvals are sent. If you have not received notification or documentation and it is needed for any reason or you feel a written formal complaint is in the process, you may contact Robin Linton at 502-564-4970 or [robin.linton@education.ky.gov](mailto:robin.linton@education.ky.gov) for the status. Again, if Robin Linton feels there is a problem with your waiver or you shortened school day notice as she is processing them, she will contact you by telephone or by email.